
(2015) 02 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition (C) No. 271 of 2012

M. Shyamkishwor Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Citation : (2015) 02 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : H. Ishwarlal, for the Appellant; K. Jagat, Govt. Advocate and S. Rupachandra, ASG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—Heard Shri H. Ishwarlal, learned counsel appearing for the petitioner, Shri K. Jagat, learned Government Advocate appearing for the respondents No. 1, 3 and 4 and Shri S. Rupachandra, learned ASG appearing for the respondent No. 2.

2. The above petition has been filed by the petitioner praying for quashing the order dated 14-03-2012 issued by the Director of Education(S), Government of Manipur and also for directing the respondents for payment of pension as per basic pay scale of Rs. 6500-10500/-.

The facts in short are as under-

3. On 03-04-1978 the petitioner initially joined his service as Head Pandit at the Khurai Thangjam Leikai L.P. School (Aided) and consequent upon the said School being taken over, on 26-10-1978 the then Director of Education (S), Government of Manipur issued an order appointing the Head Masters/Head Pandits/Assistant Teachers/Assistant Pandits of the erstwhile school including the petitioner against the posts created by the State Government. Thereafter, the Inspector of Schools, C.D. Zone - II, Government of Manipur issued an order dated 19-08-1982 to the effect that the petitioner and other teachers numbering 39 (thirty nine) were to

be in-charge of the newly upgraded J.B. Schools and the petitioner was posted at Khurai Thanjam Leikai J.B. School.

4. Consequent upon and on their passing the Senior Basic Training/Junior Basic Training Examination, the petitioner and a large number of other teachers were allowed to enjoy the trained scale of pay of Rs. 1250-1975 (pre-revised) w.e.f. the date indicated therein vide order dated 04-10-1990 issued by the then Director of Education (S), Government of Manipur. On 03-08-1991 the Commissioner, Education (S), Government of Manipur issued a resolution that the recommendation of the State Education Commission which revised the basic scale of Head Master, J.B. Schools at Rs. 1400-2660/- after 15 years of service in the grade, would be considered and a decision thereof be taken.

5. Pursuant to and in compliance of the directive contained in the judgment and order dated 21-09-1989 passed by the Hon"ble Gauhati High Court in Civil Rule No. 28/1983, the Director of Education (S) issued an order dated 22-05-1992 to the effect that the petitioner was given the pay scale of Rs. 640-1410/- with effect from the date shown against him and after 01-01-1985 his pay scale be fixed notionally w.e.f. 01-04-1990 as per modified R.O.P Rules, 1990.

6. While the petitioner was working as Head Master at Sarouthel Primary School and the petitioner, having completed 15 years of service, was given senior scale of pay of Rs.1640-2900 vide order dated 08-01-1998 issued by the Zonal Education Officer. Consequent on his attending the age of superannuation, on 17-04-2009 the petitioner was allowed to retire from service in the pay scale of Rs. 6,500-10500/- (Senior Scale) w.e.f. 28-02-2009 which has been duly recorded in the Service Book of the petitioner. Accordingly, the Under Secretary (Pension Cell) vide its letter dated 07-11-2009 furnished the pension papers of the petitioner to the Accountant General.

7. But in the pension payment order issued by the Sr. Deputy Accountant General, Manipur the pension of the petitioner was computed at Rs. 4440/- on the basis of pay scale of Rs. 4000-6000/- and not on the basis of pay scale of 6500-10500/-. On receipt of pension from 01-03-2009 to July, 2010 and on enquiry, the petitioner came to know about the wrong computation of pension and therefore, submitted representations for necessary correction which the respondents failed to do so. Being aggrieved, the petitioner filed a W.P. (C) No. 770 of 2010 and after the same being withdrawn, the petitioner filed the writ petition being W.P. (C) No. 421 of 2011 which was disposed of by directing the petitioner to submit a detailed representation which should be considered by the respondents therein by passing a speaking order. Since the Commissioner (Education/S) failed to consider the said representation, the contempt petition being Contempt Case (C) No. 152 of 2011 was filed and in view thereof, the Principal Secretary, Education (S), Government of Manipur issued an order dated 06-02-2012 allowing the petitioner to retire on his substantive post of Matriculate Teacher with the instruction to the Director of Education to issue necessary retirement order accordingly. Pursuant to the said instruction, the

Director of Education issued an order dated 14-03-2012 ordering that the petitioner shall be deemed to have retired as Trained Matriculate Teacher w.e.f. 28-02-2009. The present writ petition has been filed by the petitioner for quashing the said order dated 14-03-2012.

8. The respondents No. 1 and 4, in their affidavit-in-opposition, took the stand that in the order dated 17-04-2009 issued by the Director of Education (S), the pay scale of the petitioner was inadvertently and wrongly quoted as Rs. 6500-10500/- and the same was rectified vide order dated 14-03-2012 to the effect that the petitioner be deemed to have retired as Trained Matriculate Teacher w.e.f. 28-02-2009. It is also stated that the petitioner ought to retire from service against his substantive post, as the petitioner was not appointed as Head Master on regular basis on the recommendation of a DPC. In line with the stand of the State Government, the respondent No. 2, in the affidavit filed on its behalf, stated that the petitioner was declared Headmaster-in-Charge only and had not been regularized as required under the order dated 25-02-2006 and that the order dated 22-05-1992 by which the petitioner was allowed to enjoy the scale of Headmaster w.e.f. 03-09-1982 would be treated as ab-initio null and void since the same had been issued without the concurrence of the Finance Department.

9. The counsel for the petitioner has heavily relied upon the judgment and order dated 21-09-1989 passed by the Hon''ble Gauhati High Court, Imphal Bench in CR No. 28 of 1983 wherein it was held that no member of the petitioner's association be displaced or disturbed, if such member was earlier declared as Headmaster and has submitted that the petitioner was entitled to pension as Headmaster. In addition to the above and in support of his contention, the counsel for the petitioner has relied upon the decisions rendered by the Apex Court in the case of M. Nagabhushana Vs. State of Karnataka and Others, .

10. It is not in dispute that the Hon''ble Gauhati High Court vide its judgment and order dated 21-09-1989 referred to above, has held that no member of the petitioner's association be displaced or disturbed, if such member was earlier declared as Headmaster as is evident from the order dated 22-05-1992 itself that the same was issued in compliance of the directive contained in the said judgment and order. The Notification dated 02-12-1996, a copy of which was produced before this court and by which the Directorate of Education (S), Manipur [Headmaster (Lower Primary/Primary) School] Recruitment Rules, 1996 came to be made for the first time, has shown that prior to 1996, there had been no recruitment rules for recruitment to the post Headmaster and that the system of declaring the senior most Assistant teacher as the Headmaster in-charge was in vogue.

11. Shri K. Jagat, Government Advocate fairly placed on record a copy of the judgment and order dated 27-04-2012 passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 750 of 2010 which has already settled the issues involved herein. The said writ petition being W.P. (C) No. 750 of 2010 was

filed by persons who are similarly situated with the petitioner challenging the validity and correctness of the order dated 25-02-2006 which states that there was no post of Head Pandit in the Government LP Schools except those promoted to the post of Headmaster of JB/Primary School on the recommendation of a duly constituted DPC. In view of this order dated 25-02-2006, the MGEL for the petitioners therein was not prepared resulting in the denial of pay since June, 2009. It is submitted in the said writ petition that members of the petitioner's association who approached the Hon''ble Gauhati High Court by way of Civil Rule such as Shri P. Bijoy Singh and many other Headmasters are enjoying the service benefits of Headmaster including GPF. Pension etc. but the same was denied to the petitioner therein. The Hon''ble Gauhati High Court held as under:

"In my opinion, the declaration of the petitioners as Headmaster of JB/Primary Schools with retrospective effect in accordance with the findings of this court can not be construed to be grant of promotion, pay revision or creation of post, which would require concurrence of the Finance Department nor can it construe to be regularization of the post of Headmaster held by the petitioners without recommendation of DPC. In the view that I have taken, the impugned order dated 25-02-2006 can not be sustained in law and is liable to be set aside." While allowing the said writ petition, the Hon''ble Gauhati High Court, Imphal Bench directed that the petitioners therein be treated as regularly/substantively appointed as Headmaster and therefore, be entitled to all service benefits extended to Shri P. Bijoy Singh, president of Manipur JB/ME Schools Headmasters Association (now retired from service) and other retired Headmasters.

12. The above decision has nullified the stand taken by the State Government as well as the office of the Accountant General and therefore, there is no reason why the benefits as directed by the court be not extended to the present petitioner so as to avoid any discrimination on the part of the State Government. In other words, the present case is squarely covered by the judgment and order dated 27-04-2012 passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 750 of 2010. The petitioner being entitled to be treated as regularly/substantively appointed Headmaster, is entitled to all service benefits extended to the persons similarly situated as explained and held in the above decision of the Hon''ble Gauhati High Court.

In view of the aforesaid circumstances, this court is of the view that the impugned order dated 14-03-2012 is not sustainable in law and is liable to be set aside and accordingly, I allow the writ petition and quash the impugned order dated 14-03-2012 with the direction that the respondents shall consider for payment of pension to the petitioner as per pay scale of Rs. 6500-10500/- fixed in the order dated 05-01-1998 issued by the Zonal Education Officer, Zone - II and order dated 17-04-2009 issued by the Director of Education (S), Government of Manipur and issue an appropriate order within a period of two months from the date of receipt of a copy of this judgment and order. No order

as to cost.